

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JOSEPH LEROY DAYRINGER,)
Register No. 161097, and JAMES ERIC)
MANSFIELD, Register No. 191434,)

) Plaintiffs,)

) v.)

No. 08-4128-CV-C-MJW

DAVID WEBSTER, et al.,)

) Defendants.)

ORDER

Defendants have filed motions to dismiss claims against named defendants Arthur Wood, David Webster and Bill Galloway, who have retired from the Missouri Department of Corrections. Defendants argue that the retirements of Wood, Webster and Galloway make plaintiffs’ claims against them moot. Plaintiffs have filed suggestions in opposition.

Upon review, it is clear that defendants made this same argument in their motion for summary judgment, which was denied by the Honorable Scott O. Wright. In light of the previous ruling on this issue, defendants’ motions to dismiss are denied.

Plaintiffs have filed a motion to amend their complaint to add the Missouri Department of Corrections as a defendant and to clarify their claims as including a constitutional challenge to the policies of the Missouri Department of Corrections which limit the number of books they may have in their cells. Defendants have filed suggestions in opposition.

Upon review, the court will grant leave to amend, with exception of plaintiffs’ damage claims, which are denied. See Fed. R. Civ. P. 15. At this late stage of the proceedings, the court will not allow plaintiffs to add claims seeking money damages because this would be unduly prejudicial to the defendants. Plaintiffs may continue with their claims for declaratory relief. Plaintiffs will be granted leave to amend to add the Missouri Department of Corrections as a defendant and to clarify their claims to include a challenge to the constitutionality of the prison book policies. This court finds that justice requires granting the pro se plaintiffs leave to amend

and that such amendment relate back to plaintiffs' original complaint and claims seeking relief. Fed. R. Civ. P. 15 (a)-(c). The court finds that, despite the late hour of the amendment, defendants will not suffer undue prejudice. Missouri Department of Corrections has been on notice of plaintiffs' claims since they were filed because the defendants in this case are employees of the Department of Corrections and were being sued in their official capacities. Further, as to the additional claim challenging the prison book policies, the factual pleadings have always included the book policies and defendants' motion for summary judgment shows that the state defendants contemplated this claim as they argued in their motion that the particular policy was constitutional.

In ruling these motions, the court notes its strong preference to resolve plaintiffs' claims fully on the merits and that this case is set for a bench trial.

IT IS ORDERED that defendants' motions to dismiss are denied. [112, 117, 123] It is further

ORDERED that plaintiffs' motion for leave to amend is granted. [118]

Dated this 7th day of September, 2011, at Jefferson City, Missouri.

/s/ *Matt J. Whitworth*

MATT J. WHITWORTH
United States Magistrate Judge